

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3391 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

RASIDABANU JAMALBHAI

Versus

MUSAJI HUSSEIN

Appearance:

MR JITENDRA M PATEL for Petitioners
MR AV TRIVEDI for Respondent No. 2
MR MUKESH A PATEL for Respondent No. 4
None present for other Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/05/2000

ORAL JUDGEMENT

#. The question involved in this case is whether the technicality should prevail over substantial justice or substantial justice over technicalities. If it is

accepted that technicalities to prevail then certainly substantial justice will suffer. The courts are there to do substantial justice to the parties and no party should suffer only on the ground of technicality or some lapses or error on its part.

#. The facts of the case, in brief, are that the respondent No.1 had taken a loan of Rs.4,500/= on 13.11.71 for purchase of oil engine from the respondent No.2 - Bank. The respondent No.1 is the owner/ occupier of agricultural land bearing survey No.123 admeasuring 10 acres and 10 Gunthas. This loan amount was not paid by respondent No.1. The bank has taken appropriate proceedings for recovery of this loan amount. This loan was secured by registered deed of mortgage of land aforesaid executed by the loanee, the respondent No.1. The Registrar, Cooperative Societies, Rajkot, issued a certificate of dues dated 28.2.78 and 31.1.86. In pursuance of the certificate, the land in question was put to auction. No private bidder came forward with offer to purchase the said land. The Circle Inspector, as representative of the State Government, purchased the said land as per Rule 129(4) of the Gujarat Land Revenue Rules, for and on behalf of the State Government for Rs.17,497/=. The petitioners are the purchasers of this land earlier to the date on which the same was put to auction. This fact is not in dispute.

#. It is case of petitioners that behind the back of petitioners, this land was put to auction but that case is difficult to accept if we go by the reply filed by respondent No.2 to the special civil application. After due publication of notice etc. this land was auctioned. However, it is difficult to accept that the physical possession of this land was given to the Mamlatdar. The respondents No.3, 4 and 5 have not filed reply to the special civil application. However, respondent No.2 filed reply and therefrom it is clearly borne out that physical possession of the land is with petitioners though it may be stated to be unauthorized and illegal. This land was purchased by State Government only for the reason that private bidder has not come.

#. On 12.5.89, while issuing notice to respondents, interim relief has been granted in favour of petitioners on condition of depositing a sum of Rs.13,000/= in the court. This amount has been deposited. The petitioners are ready and willing to pay all the dues of the amount of loanee with interest. The balance amount comes to Rs.9,180/=. That too has been deposited by petitioners in this court.

#. Having heard the learned counsel for the parties and having a justice oriented approach and to give substantial justice to the parties and keeping in view the fact that the State Government is unable to maintain its own land from interference, occupation or trespasser, this land, if it is permitted to be retained with the petitioners will not cause any loss to the respondents. The Bank was only to recover the loan amount. It was not interested in the land. The Mamlatdar has to conduct auction for recovery of this amount. It was not desirous of purchasing the land but under compulsion this land has been purchased. This amount of Government is secured and when this amount has been deposited by petitioners before this court, in case this auction is set aside, it will not adversely affect any of the interest of the State Government.

#. As a result of aforesaid discussion, it is hereby declared that the auction of the land in question made and ultimately the bid accepted by the respondent-State Government is declared to be ineffective and inoperative and all these proceedings are quashed and set aside on the condition that the respondent-State of Gujarat shall be entitled to get the amount of Rs.13,000/= plus Rs.9,180/= lying deposit in this court forthwith. The registry is directed to pay this amount to the State Government on being approached by its officer to the registry. Necessary correction to be made in the revenue record to this extent. If any entry is made in the revenue record in respect of land in favour of State of Gujarat, the same shall also stand quashed and set aside accordingly. Necessary entries be made in the revenue record in favour of petitioners on the basis of sale deed which has been executed by respondent No.1 in favour of petitioners in 1988. Rule is made absolute accordingly with no order as to costs.

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(sunil)